

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WORCESTER DIVISION**

KATHLEEN A. GARRITY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:15-cv-40042
)	
LUSTIG, GLASER & WILSON, P.C.,)	
)	
Defendant.)	

PLAINTIFF’S COMPLAINT

Plaintiff, KATHLEEN A. GARRITY (“Plaintiff”), through her attorneys, KORTH LAW OFFICE, alleges the following against Defendant, LUSTIG, GLASER & WILSON, P.C. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331, 1367, and 15 U.S.C. §1692k.
3. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”
4. Venue and personal jurisdiction in this District are proper because Defendant does or transacts business within this District, and a material portion of the events at issue occurred in this District.

PARTIES

5. Plaintiff is a natural person residing in Northborough, Worcester County, Massachusetts.
6. Plaintiff is a consumer as that term is defined by 15 U.S.C. §1692a(3).
7. Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. §1692a(5).
8. Defendant is a debt collector as that term is defined by 15 U.S.C. §1692a(6).
9. Defendant attempted to collect a consumer debt from Plaintiff.
10. Defendant is a debt-collection law firm located in Waltham, Massachusetts.
11. Defendant's business includes, but is not limited to, collecting on unpaid, outstanding account balances.
12. When an unpaid, outstanding account is placed with Defendant it is assigned a file number.
13. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

14. Defendant is attempting to collect a debt from Plaintiff arising from an account owed to original creditor, Capital One Bank (USA), N.A. ("Capital One"), account number ending in 7155 ("Account").
15. Defendant has assigned its file number of 4S155 to the aforementioned Account.
16. Plaintiff's alleged debt owed to Capital One arises from transactions for personal, family, and household purposes.
17. Plaintiff retained the services of Debt Counsel for Seniors and the Disabled ("DCSD") to help with Plaintiff's unsecured debts.
18. DCSD protects seniors, veterans, and the disabled to ensure creditors and collectors do not violate collection laws or garnish federally protected incomes, such as Social Security,

Social Security Disability, Veterans benefits, and other federal funds.

19. On February 25, 2014, Defendant mailed a collection letter to Plaintiff regarding the Account. See Defendant's letter attached as Exhibit A.
20. On March 5, 2014, DCSD faxed a notice of representation and cease and desist letter, dated March 4, 2014, to Defendant at 781-514-1894. See the letter attached as Exhibit B.
21. DCSD's letter was provided to Defendant with Plaintiff's name, Defendant's file number, and a cease and desist request from both DCSD and Plaintiff. *Id.*
22. On March 5, 2014, after DCSD's letter was faxed to Defendant, a Transmission Verification Report was generated.
23. According to the Transmission Verification Report, Defendant received DCSD's notice of representation and cease and desist letter on March 5, 2014.
24. Despite having received Plaintiff's cease and desist request and letter informing Defendant of DCSD's representation, on March 11, 2014, Defendant mailed a collection letter to Plaintiff regarding the Capital One account. See the letter attached as Exhibit C.
25. Further, on or about March 18, 2014, Defendant called Plaintiff from 800-743-8602 and recorded a voicemail message for Plaintiff at Plaintiff's telephone number indicating that the caller was Lustig, Glaser & Wilson, P.C. and that the call was for Kathleen Garrity [Plaintiff] and to please call [them] if Kathleen Garrity [Plaintiff]—or similar words to that effect.
26. 800-743-8602 is one of Defendant's telephone numbers.
27. The aforementioned voicemail message recorded by one of the Defendant's collectors did not state that the caller was attempting to collect a debt.
28. Defendant's collector who called Plaintiff and left her a voicemail message was working within the scope of the collector's employment when communicating with Plaintiff in an

attempt to collect a debt.

29. Defendant's collector is familiar with the FDCPA.

30. Defendant's collector knows that the FDCPA requires debt collectors to state that the communication is an attempt to collect a debt.

31. Despite Plaintiff's request that Defendant cease contacting her directly in connection with the alleged Capital One account, Defendant continued to send collection letters and place collection calls to Plaintiff seeking and demanding payment on the alleged debt at issue in this case.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

32. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter when Defendant sent Plaintiff at least one additional collection letter and placed at least one additional collection call to Plaintiff; and
- b. Defendant violated §1692e(11) of the FDCPA by communicating with Plaintiff and failing to inform Plaintiff that the communications were an attempt to collect a debt when Defendant's collector recorded a voice mail message at Plaintiff's telephone number and did not disclose that the communication was an attempt to collect a debt.

WHEREFORE, Plaintiff, KATHLEEN A. GARRITY, respectfully requests judgment be entered against Defendant, LUSTIG, GLASER & WILSON, P.C. for the following:

33. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k;
34. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k; and
35. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

March 5, 2015

By: /s/ Sebastian Korth
Sebastian Korth
Korth Law Office
One Center Plaza, Suite 220
Boston, MA 02108
Tele: (617) 259-1955
Fax: (617) 238-2167
Attorney for Plaintiff

EXHIBIT A

LUSTIG, GLASER & WILSON, P.C. Attorneys at Law

P.O. Box 549287, Waltham, Massachusetts 02454-9287 / Tel (781) 449-3000 / (800) 743-8602 / Fax# 781-449-6600

4S155

February 25, 2014

Kathleen A. Garrity
10 Village Dr Apt D
Northborough MA 01532-2647



Office Hours: (M-F) 8:00AM-6:00PM

MAR 14 2014

Re: Capital One Bank (USA), N.A.
Account No.: XXXXXXXXXXXX7155
File No.: 4S155 IVR#: 455549 Current Balance: \$6,530.71

Dear Ms. Garrity:

Capital One Bank (USA), N.A. has placed your account identified above with our office for collection of the debt it informs us is owed to it. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, you apparently have been either unable or unwilling to make satisfactory arrangements with our client for the payment of your account. We hope to discuss this matter with you so an amicable resolution can be reached.

If, since you last had contact with our client, your situation has changed or you have changed your mind about satisfying your obligation and would prefer to have this matter resolved, please contact this office by mail or call us toll free at (800) 743-8602 and ask to speak to the Recovery Area.

Kindly contact us at your first opportunity so we can work together to arrive at a reasonable payment program if you are unable to pay the full balance due on your account at this time.

Lustig, Glaser & Wilson, P.C. ACL600P1-1
*** SEE REVERSE SIDE FOR IMPORTANT CONSUMER RIGHTS AND INFORMATION. ***

Please detach this portion and return it with your payment.
Please use our file number on all checks and correspondence.

File No.: 4S155

AMOUNT ENCLOSED: \$ _____

Kathleen A. Garrity
10 Village Dr, Apt D
Northborough, MA 01532-2647
(508) 303-5093

MAIL TO: Lustig, Glaser & Wilson, P.C.
PO Box 549287
Waltham, MA 02454-9287
(800) 743-8602

MAKE CHECKS PAYABLE TO:
Lustig, Glaser & Wilson, P.C.



Address or Telephone Changes? Please print changes in the space above.
*** SEE REVERSE SIDE FOR IMPORTANT CONSUMER RIGHTS AND INFORMATION. ***

NOTICE OF IMPORTANT RIGHTS

This is an attempt to collect a debt. Any information obtained will be used for that purpose. If you do not dispute the validity of this debt, or any portion thereof, within thirty days after receiving this letter, we will assume it is valid. If you do dispute the validity of this debt, or any portion thereof, in writing, within the thirty-day period, we will obtain verification of the debt or a copy of any judgment and will mail a copy of such verification or judgment to you. At your request in writing, within the thirty day period, we will provide you with the name and address of the original creditor, if different from the current creditor. This communication is from a debt collector.

Special Notice for Massachusetts Debtors: If you notify us in writing within 30 days after receipt of this notice that the debt, or any portion thereof is disputed, we will obtain verification of the debt and provide you, or your attorney, the additional materials described in subsection (2) of 940 CMR 7.08.

EXHIBIT B

Debt Counsel for Seniors & the Disabled

DCSD

March 4, 2014

BY FAX ONLY: ~~781-449-6600~~

781-514-1894

Page 1 of 2

Lustig, Glaser & Wilson, P.C.
P.O. Box 549287
Waltham, MA 02454

Re: Kathleen Garrity
Alleged creditor: Capital One Bank
Your file or reference No.: 4S155
Our file No.: 12746

To Whom It May Concern:

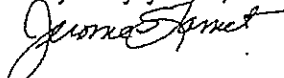
Please be advised that my law firm represents the above-referenced client(s) for purposes of enforcing their rights pursuant to all applicable federal debt collection laws. Debt Counsel for Seniors and the Disabled exclusively represents clients who are seniors, veterans and/or disabled individuals whose income (e.g. social security, disability, veterans' benefits, etc.) is protected by federal law.

My client hereby disputes the entire amount of the debt referenced above. Accordingly, please provide any agreement(s) my client may have signed regarding this debt as well as an accounting history, balance calculation and charge-off date, if applicable, to this law firm at the above address. Also, please report this debt as disputed to all Credit Reporting Agencies to which you reported this debt..

Notwithstanding my representation, be on notice that my client hereby directs you to cease and desist all further communications with my client and hereby expressly revokes any prior consent that may have been given to call any telephone. My client also hereby revokes any prior business relationship with you or with any other party(s) involved in this matter, which includes revocation of any agreement to arbitrate any matter that my client may have entered into with your or any predecessor in interest.

Per the official Staff Commentary on Regulation Z 226.2(a)(22), please direct all further communication regarding this matter to my office, Debt Counsel for Seniors and the Disabled, 542 S. Dearborn Street, Suite 1260, Chicago, IL 60605, 800-992-3275.

Very truly yours,



Jerome S. Lamet, Supervising Attorney
Debt Counsel for the Seniors and the Disabled
Cc: Kathleen Garrity

Jerome S. Lamet, Supervising Attorney
The Pontiac Building
542 South Dearborn
Suite 1260
Chicago, Illinois 60605
V: (312) 939-2221
F: (312) 356-3199

EXHIBIT C

LUSTIG, GLASER & WILSON, P.C. *Attorneys at Law*

P.O. Box 549287, Waltham, Massachusetts 02454-9287 / Tel (781) 449-3000 / (800) 743-8602 / Fax# 781-449-6600

4S155

March 11, 2014

Kathleen A. Garrity
10 Village Dr Apt D
Northborough MA 01532-2647



Office Hours: (M-F) 8:00AM-6:00PM

MAR 21 2014

Re: Capital One Bank (USA), N.A.
/ Kathleen A. Garrity

Account No.: XXXXXXXXXXXXX7155

File No.: 4S155 IVR#: 455549 Current Balance: \$6,530.71

Dear Ms. Garrity:

It's easy to propose a payment arrangement on your account. Simply call us at 1-800-743-8602 to speak with one of our friendly and knowledgeable account representatives, who will be happy to discuss your current financial situation and try to establish a reasonable repayment plan, acceptable to all concerned.

A payment arrangement can also be proposed by completing the Financial Statement appearing on the reverse side of this letter and returning it to us in the enclosed envelope, together with your suggestion for a monthly payment plan.

The more complete the information you provide to us, the better we will be positioned to understand your current financial situation and your ability to make payment on your account. We will review the information you have provided us with and will let you know if your proposal is acceptable to our client.

Please give this matter your attention at your earliest opportunity. We look forward to working with you to get this matter resolved.

Lustig, Glaser & Wilson, P.C.

ACL600P1-1E

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Please see reverse side for Financial Statement - Complete & Return.